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contd

the discrete tray being compactable to a second storage configuration and positionable entirely within the interior of the dish drainer when the tray is in the second storage configuration.

13. (Twice Amended) A combination dish drainer, tray set and package comprising;

a dish drainer having a perforate bottom, upstanding perimeter walls and an open top which together define a drainer interior;

a separate and discrete tray configurable in a first compacted storage configuration and a second deployed configuration, the tray being positionable entirely within the drainer interior, when in the storage configuration, the tray having a footprint greater than the bottom of the drainer and being positionable substantially beneath the perforate bottom when in the deployed configuration; and

a package that is sized to contain the drainer when the tray is in the compacted storage configuration and positioned in the drainer interior, and is not of sufficient size to contain the drainer and tray when the tray is in the deployed configuration.

#### **REMARKS**

Claims 1-19 are pending in the application, wherein claims 5-8 and 16 have been withdrawn from consideration as directed to a non-elected species. By the present amendment, claims 1-19 remain pending and claims 1 and 13 have been amended herein.

#### **Claim Rejections 35 U.S.C. §112**

Claims 13-15 and 17 have been rejected under 35 U.S.C. §112, as indefinite. Particularly, the recitation "too small" in claim 13 has been identified because the term "too" is considered relative. Claim 13 has been amended herein to eliminate the indefinite phrase. Reconsideration of the rejection under §112 is respectfully solicited.

**Claim Rejections - 35 U.S.C. §102**

Claims 1-4 and 9-12 have been rejected under §102(b) as anticipated by Krause, U.S. Patent No. 3,800,957 (Krause). Claims 1-4 have also been rejected under §102(e) as anticipated by Patadia, et al., U.S. Patent No. 6,170,676 (Patadia). The applicants respectfully traverse these §102 rejections based on the following grounds.

An amended, independent claim 1 recites that the dish drainer and tray are discrete, separate components. Claim 1 also recites that the tray in one configuration is positionable substantially beneath the perforate bottom of the dish drainer. This is so the tray can catch water dripping from dishes held within the drainer interior. Claim 1 further recites that the tray in another configuration is positionable entirely within the drainer interior. The drainer interior is defined by the perforate base and upstanding perimeter walls of the drainer.

Neither Krause nor Patadia recite such a drainer and tray combination. In each of these two cited references, *there is no discrete tray that is separate from the dish drainer*. Further, in each of these references, *there is no tray disclosed of any kind that is selectively positionable either entirely within the drainer interior or substantially beneath the perforate bottom of the dish drainer*. In contrast, each reference discloses a unitary dish drainer that can be folded up onto itself for storage. Even by conveniently identifying interconnected pieces of the same dish drainer component in one reference as either tray or drainer, as has been done in the official action, one cannot find all of the limitations of amended claim 1.

Neither Krause nor Patadia discloses all of the limitations of amended independent claim 1. Therefore, claims 1-4 and 9-12 are neither anticipated nor rendered obvious by Krause or Patadia. These claims are believed to be in condition for allowance based on these grounds.

**Claim Rejections - 35 U.S.C. §103**

Claims 13-15 and 17-19 have been rejected under §103(a) as unpatentable over Krause as taken alone. The applicants respectfully traverse this rejection based on the following grounds.

Independent claim 13 has been amended to recite that the discrete and separate tray is positionable either entirely within the drainer interior or substantially beneath the perforate base of the drainer. As noted above, Krause cannot meet at least this limitation. Claim 13 also recites a package that is sized to contain the dish drainer when the tray is positioned within the drainer

interior. No such configuration can be attained by the Krause dish drainer. Therefore, no such packaging arrangement is possible, even taking into account the examiner's unsupported statement that it would have been an obvious design choice to "provide a package to contain the assembly when the tray is in the storage configuration . . . ."

Krause fails to disclose or suggest all of the limitations of independent claim 13, whether taken alone, or in combination with the alleged obvious design choice to provide a package to contain the assembly. In view of the foregoing amendments and remarks, claims 13-15 and 17-19 are not rendered obvious by the teachings of Krause.

Claims 1-4, 9-15 and 17-19 are believed to be in condition for allowance in view of the foregoing amendments and remarks. Claims 1 and 13 are generic to the claimed species. Thus, the withdrawn claims 5-8 and 16 are also believed to be in condition for allowance. The applicants request that the withdrawn claims be rejoined in the application and allowed.

#### CONCLUSION

Pending claims 1-19 are believed to be in condition for allowance in view of the foregoing amendments and remarks. Reconsideration and withdrawal of the claim rejections and allowance of claims 1-19 are hereby respectfully solicited.

The examiner is invited to contact the undersigned at the telephone number listed below in order to discuss any remaining issues or matters of form that will place this case in condition for allowance.

Respectfully submitted,



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